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OFFICE OF PETITIONS

In re Application of	:
Stewart et al.	:
Application No. 10/761,734	: DECISION ON PETITION
Filed: January 20, 2004	:
Attorney Docket No. 1981/688	:

This is a decision on the petition under 37 CFR 1.181, filed July 12, 2004, requesting that USPTO determine that the files contained on the compact discs filed with the application were received by the USPTO.

The application was filed on January 20, 2004 with 67 pages of specification, 27 sheets of drawings, an executed declaration, two compact discs containing a Computer Listing Appendix, and a preliminary amendment. However, on May 7, 2004, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s) in a Nonprovisional Application," stating that the application had been accorded a filing date of January 20, 2004, but informing applicants that the Office was unable to read all the files on the compact discs. The Office required new duplicate set of discs because the discs included bad media, viruses, and unknown or corrupted filed format.

In response, on July 12, 2004, applicants filed the present petition and authorized the payment of the petition fee. Applicants explained that a review of their file copy of the compact discs disclosed that the files contained two files in a format other than the ASCII format required by 37 CFR 1.52(e)(i)(3). The file names were motx.pjt and wirbd3_5p.pjt; however, the remaining files on the copy of the disc were in ASCII format. To correct the deficiency, applicants submitted duplicate sets of compact discs. Applicants state that the replacement discs contain only files in ASCII format and that the non-ASCII files have been removed. Applicants assert that the replacement discs include the ASCII files that were filed with the application.

Applicants seek to file a preliminary amendment to correct the reference to the Computer Listing Appendix included in the specification of the application. The preliminary amendment would amend the specification by deleting the reference to the non-ASCII files, which have been removed from the replacement discs filed with the present petition.

Upon consideration of applicants' arguments, the Office will grant the application a filing date of January 20, 2004, with the ASCII files as part of the original application. The Office will also allow applicants to proceed by cancelling the references to the non-ASCII files upon the filing of a preliminary amendment.

Accordingly, the petition is granted.

For the purposes of this decision, the Office will not make a determination at this time whether the non-ASCII files contain essential subject matter.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

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